

**COMMONWEALTH OF KENTUCKY
KENTUCKY BOARD OF TAX APPEALS
FILE NUMBER K05-R-10**

WILLIAMS TRUCKING, INC.

APPELLANT

V.

ORDER NO. K-19425

**TRANSPORTATION CABINET
COMMONWEALTH OF KENTUCKY**

APPELLEE

This matter came before the Board for a hearing on October 10, 2005. After a review of the record and due consideration, the KBTA enters the following findings of fact, conclusions of law and order.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER

This is an appeal from the final ruling of the Kentucky Transportation Cabinet assessing taxes upon Williams Trucking, Inc., for the periods July 1, 2001 through March 31, 2004 based upon “attributed” mileage for the number of trucks owned by Williams Trucking for which decals had been purchased.

Williams Trucking in its returns reported that they had put these trucks to zero usage upon the highways of Kentucky during these periods.

At the hearing Diane Williams testified on behalf of the Appellant that no highway use was made by Williams Trucking during the audit periods but that Southern States Cooperative had leased one of the trucks from the owner to haul fertilizer. However no evidence was offered at the hearing that Southern States had in fact put any calculable miles on the truck during the audit periods.

Because the Transportation Cabinet has admittedly no records of usage, had only “attributed” miles to the trucks and further because the testimony at the hearing was uncontroverted that Williams Trucking Inc. had put no miles on the trucks during the audit periods, the Board finds as a matter of fact and concludes as a matter of law that the assessments as contained in the final ruling are without factual support and therefore hereby ORDERS that the taxpayer is relieved from the assessments, penalties and interest which are the subject of this appeal.

This is a final and appealable order. All final orders of this agency shall be subject to judicial review in accordance with the provisions of KRS Chapter 13B. A party shall institute an appeal by filing a petition in the Circuit Court of venue, as provided in the agency’s enabling statutes, within thirty (30) days after the final order of the agency is mailed or delivered by personal service. If venue for appeal is not stated in the enabling statutes, a party may appeal to Franklin Circuit Court or the Circuit Court of the county in which the appealing party resides or operates a place of business. Copies of the petition shall be served by the petitioner upon the agency and all parties of record. The petition shall include the names and addresses of all parties to the proceeding and the agency involved, and a statement of the grounds on which the review is requested. The petition shall be accompanied by a copy of the final order.

A party may file a petition for judicial review only after the party has exhausted all administrative remedies available within the agency whose action is being challenged, and within any other agency authorized to exercise administrative review.

A petition for judicial review shall not automatically stay a final order pending the outcome of the review, unless:

- (a) An automatic stay is provided by statute upon appeal or at any point in the administrative proceedings;
- (b) A stay is permitted by the agency and granted upon request; or
- (c) A stay is ordered by the Circuit Court of jurisdiction upon petition.

Within twenty (20) days after service of the petition of appeal, or within further time allowed by the Circuit Court, the Kentucky Board of Tax Appeals shall transmit to the reviewing court the original or a certified copy of the official record of the proceeding under review in compliance with KRS 13B.140(3).

**DATE OF ORDER
AND MAILING: January 9, 2006**

**KENTUCKY BOARD OF TAX APPEALS
FULL BOARD CONCURRING**

**NANCY MITCHELL
CHAIR**